

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER N. WASHINGTON,
Plaintiff,

v.

NURSE MAGADO,
Defendant.

Case No. 21-cv-08126 BLF (PR)

**ORDER ADDRESSING MOTION OF
OBJECTION; GRANTING FINAL
EXTENSION OF TIME TO
PROVIDE MORE INFORMATION
FOR DEFENDANT MAGADO**

(Docket No. 19)

Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against medical staff at Salinas Valley State Prison (“SVSP”). Dkt. No. 1. On August 22, 2022, the Court found the amended complaint, Dkt. No. 8, stated a cognizable claim against Nurse Magado for deliberate indifference to serious medical needs and ordered the matter served. Dkt. No. 9. All other named Defendants were dismissed from the action as there were no cognizable claims against them. *Id.* The CDCR filed a response, stating that they are unable to identify “Nurse Magado.” Dkt. Nos. 10, 14. Accordingly, this sole Defendant has not yet been served.

On October 31, 2022, the Court directed Plaintiff to provide more information regarding this Defendant’s identity to serve this matter, or face dismissal under Rule 4(m) of the Federal Rules of Civil Procedure. Dkt. No. 15. On December 22, 2022, the Court

1 granted Plaintiff an extension of twenty-eight days from the filing date of the order to
2 respond, such that a response was due no later than January 19, 2023. Dkt. No. 18.
3 Plaintiff was advised that failure to respond with the information would result in the
4 dismissal of his claims against Defendant Magado without prejudice pursuant to Rule 4(m)
5 without further notice. *Id.* at 2.

6 On January 30, 2023, Plaintiff filed an “objection to the court’s order” dated
7 December 22, 2022. Dkt. No. 19. Plaintiff objects “on the grounds of the probative value
8 of the issues which are actually outweighed by the unfair prejudice the order has caused to
9 the Plaintiff’s continuity [*sic*] rights to appeal ‘inter alia’.” *Id.* at 1. Plaintiff appears to be
10 objecting to the dismissal of this action if he fails to identify Defendant Magado, asserting
11 that he will suffer additional damages and injury. *Id.* Be that as it may, the Court has no
12 choice but to dismiss this action unless Plaintiff is able to identify the proper Defendant.
13 Without a proper Defendant, there is no party who can be held liable for Plaintiff’s claims,
14 no matter how meritorious.

15 In the interest of justice, Plaintiff shall be granted one final extension of time to file
16 notice with sufficient information to identify Defendant Nurse Magado such that the
17 Marshal is able to effect service and this matter can proceed.

18 19 CONCLUSION

20 For the foregoing reasons, Plaintiff’s notice of objection is noted and **DENIED**.
21 Dkt. No. 19. In the interest of justice, Plaintiff is granted a final extension of time to
22 provide more information regarding the sole Defendant named in this action. Plaintiff
23 must file notice providing the Court with more information to properly identify **Defendant**
24 **Nurse Magado**, e.g., a first initial, such that the Marshal is able to effect service. He shall
25 do so **within twenty-eight (28) days** of the date this order is filed.

26 If Plaintiff fails to respond with this information in the time provided, his claims
27 against Defendant Magado shall be dismissed without prejudice pursuant to Rule 4(m) of
28

1 the Federal Rules of Civil Procedure without further notice to Plaintiff.

2 This order terminates Docket No. 19.

3 **IT IS SO ORDERED.**

4 **Dated: __February 7, 2023__**


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

25 Order Granting Final EOT to Provide More Info
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